

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK**

ADVANCED ACCESS CONTENT SYSTEM
LICENSING ADMINISTRATOR, LLC,

Plaintiff,

v.

LANNY SHEN d/b/a DVDFAB AND
FENGTAO SOFTWARE INC., SUNREG
TECHNOLOGIES LTD. d/b/a DVDFAB AND
FENGTAO SOFTWARE INC., FENG TAO
d/b/a DVDFAB AND FENGTAO SOFTWARE
INC., SHEN XINLAN d/b/a AUDIO-DVD
CREATOR, and JOHN DOE, JANE DOE and/or
XYZ COMPANY d/b/a DVDFAB,
RIPPERBLU-RAY.COM, DVDFABB.COM and
DVDFFFAB.COM,

Defendants.

NO. 14-cv-1112 (VSB)

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF ADVANCED ACCESS CONTENT SYSTEM LICENSING
ADMINISTRATOR, LLC'S MOTION TO MODIFY THIS COURT'S
MARCH 4, 2014 ORDER FOR PRELIMINARY INJUNCTION**

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Plaintiff Advanced Access Content System Licensing Administrator, LLC (“AACCS LA” or “Plaintiff”), by its undersigned attorneys, submits this memorandum of law in support of AACCS LA’s motion to modify this Court’s Order for preliminary injunction entered March 4, 2014 [Doc. No. 21] (the “Preliminary Injunction Order” or “Order”).

PRELIMINARY STATEMENT

While purporting to participate in this litigation in good faith, including representing to this court that they have ceased selling into the United States software that circumvents AACCS Technology, Defendants have been playing what one user has aptly labeled a “chess match” behind the scenes. AACCS LA predicted¹ that Defendants were likely to evade this Court’s Preliminary Injunction Order by switching websites and doing business under different names and AACCS LA would then seek further relief from the Court. Defendants have done exactly as predicted and AACCS LA now seeks further relief in the form of a modification of the Order to explicitly prohibit Defendants’ ongoing illegal activities.

STATEMENT OF FACTS

On May 5, 2014, Defendants represented to this Court that they had discontinued sales into the United States of DVDFab Software that circumvents AACCS Technology.² Despite Defendants’ representations, Plaintiff, on May 22nd and utilizing a U.S. IP address, downloaded DVDFab Software and used it to successfully circumvent AACCS Technology of Blu-ray discs containing protected copyrighted motion picture content.³ On August 1st, Defendants advised AACCS LA and the Court that as of May 30th, Defendants introduced a new version non-AACCS-

¹PI Hearing Tr. 18:18-19:7.

²Reply Declaration of Feng Tao, dated May 5, 2014 [Doc. No. 40] (“May 5 Feng Tao Decl.”) ¶ 16; Reply Memorandum of Law in Support of Motion to Amend Injunction Pursuant to Rule 59(e), dated May 5, 2014 [Doc. No. 39] (“Feng Tao Amend Reply Br.”), at 5.

³Declaration of Matthew Hewlett, dated May 27, 2014 [Doc. No. 44] (“May 27 Hewlett Decl.”), ¶¶ 5-8, Ex. A.

decryption (“NAD”) DVDFab Software⁴ to distribute to users accessing its website from the United States. Defendants thus reason -- in their efforts to modify this Court’s Preliminary Injunction Order -- they should be allowed to operate from DVDFab.cn, DVDFab.com and any other website as long as they do not sell software that circumvents AACS Technology into the United States.⁵

AACS LA has recently discovered evidence that, despite their statements to the contrary, Defendants continue to promote and offer software to users in the United States that circumvents AACS Technology, including software that restores AACS Technology circumvention capability to its NAD version of the DVDFab Software and an alter-ego software program marketed under the brand name TDMore.⁶

Defendants’ Add-on Programs That Circumvent AACS Technology

When users from the United States visit DVDFab.cn using a U.S. IP address, they can only download the NAD (U.S.) version DVDFab Software.⁷ When those same users attempt to rip a Blu-ray protected by AACS Technology, they receive an error message:⁸

⁴ Reply Declaration of Feng Tao, dated Aug. 1, 2014 [Doc. No. 58], ¶¶ 3-5.

⁵ May 5 Feng Tao Decl. ¶¶ 10-13; Feng Tao Amend Reply Br. at 4,13.

⁶ AACS LA has been able to purchase a DVDFab Software license key from a U.S.-based computer using a U.S. IP address, activate a non-U.S. version of the software using that U.S. license key, and use the DVDFab Software to “rip”—that is bypass the protection and encryption preventing the access to and copying of and then copy free and clear of any such access and copy protection and encryption—the motion picture contents of a copy-protected Blu-ray disc, circumventing AACS Technology. Declaration of Matthew Hewlett, dated Oct. 3, 2014 (“Oct. 3 Hewlett Decl.”) ¶¶ 5-7, Ex. A. Such non-U.S. versions of the DVDFab software can be easily obtained by even casual computer users who sufficiently technologically sophisticated to use Blu-ray and DVD ripping software by accessing a proxy server (a server computer that acts as an intermediary to access other servers) or a virtual private network (or “VPN”; a localized network that one can join remotely, such as many business organizations use) located outside the United States to appear to websites they access to be coming from the country in which that proxy server or that VPN is located. *Id.* ¶ 8. There are many proxy servers and VPNs publicly available on the Internet for this purpose. *Id.* ¶ 8, Ex. B. AACS LA has observed DVDFab users instructing each other in methods to use proxy servers and VPNs to obtain the non-U.S. version of DVDFab and, alternatively, distributing an IP address from which a non-U.S. version of DVDFab Software can be downloaded into the United States without using any technique to simulate a non-U.S. IP address. *Id.*

⁷ *Id.* ¶ 9, Ex. C.

⁸ *Id.*



Clicking on “More Info...” in the dialog box displaying this error message leads users to a statement on Defendants’ website at DVDFab.cn stating:

Q: Why do I see the notice about AACS circumvention?

A: Making backup copies of discs you own or converting them to play on different devices (commonly called “Fair Use” in most places) requires circumventing or removing the copy prevention technology used on the original discs. For Blu-ray discs, this technology is known as AACS and is aggressively defended by an organization that controls and licenses it to the disc makers. Thus, DVDFab products sold in the US no longer contain the ability to remove this technology from AACS-protected discs. That being said, DVDFab users in the US may be able to search for third-party tools such as AnyDVD HD (payware), Wookao (freeware) to restore the ability to copy or convert this material. If the law from your region/area does not allow such “Fair Use” of copyrighted materials, please do not use these products. If you think the law for your area should be changed, please contact your elected representative(s).⁹

Through Defendants’ DVDFab.cn website and one of their Facebook pages (facebook.com/dvdfabber/), Defendants promote the add-on program Wookao (the “Wookao Add-on”) to restore AACS-circumvention features to the U.S. NAD version of DVDFab Software.¹⁰

The Wookao Add-on can be found at Wookao.com and Wookao.cn, each which specifically markets the Wookao software as an add-on to DVDFab Software to allow free copying of Blu-ray discs as follows:¹¹

⁹ *Id.* (emphasis added).

¹⁰ *Id.* ¶ 10, Ex. C.

¹¹ *Id.* ¶ 11, Ex. D.



The Addon app lets you freely watch DVD/Blu-ray movie discs on computer with media player software, save DVD/Blu-rays onto computer HDDs as ISO image files and movie folders, or work with a myriad of copying/burning tools, like DVDFab, 123CopyDVDPlatinum and 1ClickCopyDVD (more are coming in the future versions), to make legal backups of DVD/Blu-ray discs for private purpose only.

To install the addon, click on the download button and then either select "Open" to install right away, or select "Save" to save the installer on your computer hard disk drive for installation at any later time.

Note: It is against the law to make or distribute copyrighted materials for purposes other than your personal use. Please respect all copyright holders.



About the Addon

The Addon app is a Windows-based driver that works on-the-fly to help you freely access any DVD/Blu-ray discs, watch them on computer with media players, or work in conjunction with other DVD/Blu-ray copying or burning tools, like DVDFab, 123CopyDVDPlatinum and 1ClickCopyDVD (more are coming in the future versions), to make legal backups of the DVD/Blu-ray discs you have purchased and totally owned, for private home backup only.

Defendants instruct DVDFab users located in the United States to use the Wookao Add-on to restore AACS-circumvention functionality, pointing them to a tutorial at Myce.com—the website that has consistently promoted DVDFab Software¹²—on the installation and use of the Wookao Add-on. Defendants posted in a message board on AVSForum.com in response to a question posed by a user located in the United States:

Hey! DVDFab will do the best to protect the existing customer's interests. DVDFab can't decrypt the AACS Blurays protection in the US market. However, DVDFab can work very well together with the free Addon named Wookao to decrypt it. You can see the tutorial here: <http://www.myce.com/article/tutorial...-dvdfab-72113/>¹³

Clicking on the hyperlink redirects to a page on Myce.com containing a tutorial on installing Wookao to enable AACS Technology circumvention in the DVDFab Software.¹⁴ In another post on the same discussion topic, Defendants state:

Recently DVDFab removed their Blu-ray copying and ripping capabilities due to legal issues in the United States. It can no longer decrypt AACS blu-rays in the US version. However, luckily a new tool has emerged on forums called Wookao which is easy to set up free addon can work very well with DVDFab and being able to remove the latest protections on new releases.¹⁵

¹² See, e.g., Apr. 21 Hewlett Decl. ¶ 21, Exs. N-S.

¹³ Oct. 3 Hewlett Decl. ¶ 10, Ex. C.

¹⁴ *Id.*

¹⁵ *Id.*

Defendants' own Facebook site contains this same language, links to the tutorial on Myce.com, and is more specific regarding Defendants' "legal issues in the United States": "The company is in an ongoing legal battle with the AACS-LA and those who are looking for a way to backup their Blu-ray discs with DVDFab are sometimes blocked from doing so."¹⁶ One poster on AVSForum.com commented on Defendants' posts there, stating:

Everybody knows that Wookao is just an older version of DVD Fab PassKey Lite that you guys are distributing through a dummy chinese server. When it was first released you guys didn't bother to pull the version information out of the properties dialog box so it was plain as day. I see you got smarter and wiped the version info from the current download, but the cat is already out of the bag. It's PassKey Lite which means it just decrypts AACS but doesn't do anything about the newer BD+ and Java protections. So, I'm guessing that in response to the legal actions DVD Fab took out the AACS decryption but left in the code to handle BD+ and Java because they probably weren't covered in the current lawsuit. So for the time being, installing PassKey lite (a.k.a. WoooKao -- where did you get that name?) replaces the AACS decryption and supposedly allows DVD Fab to function once again -- I wonder if anyone here has actually tried it. I say for now because the MPAA will most certainly catch up and file more actions to get you to remove BD+ and Java circumvention. Good luck with the chess match.¹⁷

Defendants also instruct consumers and the public how to download and install Wookao on the DVDFab Forum located at their DVDFab.cn website.¹⁸

A series of too-convenient circumstances reveal Defendants' efforts from May 2014 to the present (after AACS downloaded the DVDFab Software from Defendants' DVDFab.cn website using a U.S.-based IP address) to evade this Court's Order by marketing the Wookao Add-on even while Defendants represented to this Court that they only offer NAD DVDFab Software in the United States.

To begin with, Defendants attempted to hide their direct connection to the Wookao Add-on. Versions of the Wookao Add-on prior to May 30th identified the software as DVDFab

¹⁶ *Id.* ¶ 10, Ex. C.

¹⁷ *Id.*

¹⁸ *Id.*

Passkey 8 and bore the copyright notice “Copyright © 2003-2014 Fengtao Sofwar...”¹⁹ Those traces have been removed from the present version of the Wookao Add-on in an apparent attempt by Defendants to conceal their ownership and distribution of Wookao.²⁰

Additionally, while the registrant identity for Wookao.com is presently protected through a WHOIS private domain registration service and Wookao.cn is registered to the registrant email address peterzhang1211@yandex.com,²¹ in actuality Defendants likely own these domains. Two other websites, Boooya.com and Boooya.org, promote an add-on software program virtually identical to the Wookao Add-on and share a striking resemblance to the Wookao websites:²²



Until May 26th Boooya.org was owned by one of Defendants' known alias Feng Tao at the registrant email frankosee@126.com.²³ The current registrant for Boooya.org is

¹⁹ *Id.* ¶ 12, Ex. D.

²⁰ *Id.* Ex. D.

²¹ *Id.* ¶ 14, Ex. D.

²² *Id.* ¶ 15, Ex. E.

²³ *Id.* ¶ 16, Ex. E.

peterzhang1211@yandex.com, the same registrant as Woookao.cn.²⁴ This “Boooya Add-on,” like the older version of the Woookao Add-on, identifies itself as DVDFab Passkey 8 during download and states “Passkey for Blu-ray removes all known AACs and BD+ copy protections, Region Code, BD-Live and UOPs.”²⁵ Both the Woookao and Boooya Add-ons also display licensing agreements substantially identical to the DVDFab Software agreement, including in the most recent versions.²⁶

Defendants’ Alter-Ego Software Programs That Circumvent AACs Technology

In addition to promoting these Add-ons as a way to make Defendants’ DVDFab Software functional for the purpose of circumventing AACs Technology, Defendants have also recently engaged in a campaign to build brand reputation of what they have positioned as a competitive circumvention suite of software. At least as early as July 1, 2014, Defendants began offering for sale and selling, including into the United States, from the website TDMore.com circumvention software matching the capabilities, form and even technical function of the DVDFab Software rebranded as “TDMore”.²⁷ The website at hdtolreviews.com, the only other website residing on the same IP address as TDMore.com, compares the similarities between DVDFab and the software program branded as TDMore (the “TDMore Software”), rates both programs, and promotes TDMore Software as the “Rising Star.”²⁸

Although the registrant identity for TDMore.com is obscured by WHOIS private domain registration service located in Beijing, China, historical registrant information shows that for the period from July 24 to August 13, 2014 TDMore.com was registered to Feng Tao in Hong Kong

²⁴ *Id.* ¶¶ 14-15, Exs. D-E.

²⁵ *Id.* ¶ 17, Ex. E.

²⁶ *Id.* ¶¶ 11, 17, 26, Exs. D-E, M.

²⁷ *Id.* ¶ 22-23, Exs. G-H.

²⁸ *Id.* ¶ 18, 22, Ex. F-G.

under the individual name Li Ming.²⁹ Defendants have also registered TDMore.cn, which is currently not associated with an operating website but is in no way restricted from being so-associated in the future, in the name of 冯涛 (translation: Feng Tao) listing the contact email address frankosee@126.com, the same email address Defendants used when registering BluFab.cn and Booyya.org.³⁰

While the brand has changed, the TDMore Software suite of offerings are identical to the DVDFab Software Products, including a DVD Copy, DVD Ripper, Blu-ray Copy and Blu-ray Converter (equivalent to DVDFab Ripper (3D Plus)).³¹ Defendants even sell the TDMore Software as a bundle, labeled “TDMore 4-in-1 Bundle” matching their prior “DVDFab All-In-One” software (together, the “TDMore Software”).³²

As they did with the DVDFab Software, Defendants primarily market the TDMore Software to English-Speaking United States consumers and secondarily to German and Japanese-speaking consumers and provide “English (United States),” German and Japanese language functionality for TDMore Software.³³ Tellingly, Defendants use a substantially identical Licensing Agreement for TDMore as they did for DVDFab, the Woookao Add-on and the Booyya software product identifying itself as DVDFab Passkey 8, including the provisions that “the SOFTWARE is protected by United States copyright law and international treaty provisions” and the “license will be governed by the laws of the State of South Carolina as they are applied to agreements between South Carolina residents entered into and to be performed entirely within South Carolina. The United Nations Convention on Contracts for the

²⁹ *Id.* ¶ 20, Ex. G.

³⁰ *Id.* ¶ 21, Ex. G; Declaration of Matthew Hewlett, dated Apr. 21, 2014 [Doc. No. 33] (“Apr. 21 Hewlett Decl.”) ¶ 9, Ex. B.

³¹ Oct. 3 Hewlett Decl. ¶ 23, Ex. H; Declaration of Matthew Hewlett, dated Feb. 19, 2014 [Doc. No. 10], Ex. A at 3-6.

³² Oct. 3 Hewlett Decl. ¶ 23, Ex. H.

³³ *Id.* ¶¶ 25, 27, Exs. I-L.

International Sale of Goods is specifically disclaimed.”³⁴ Defendants sell the TDMore Software using a U.S.-based payment provider that makes use of PayPal.³⁵

One user-posting by “tdmore” compares the similarities between DVDFab and TDMore Software and promoting TDMore Software as an alternative to DVDFab Software, and another noting that the TDMore Software uses the Microsoft Windows registry “keys” and “entries” (data made part of Windows’ master applications configuration database) from DVDFab 9 and similarly sets up protected folders in the same location on users’ computers to track user information.³⁶ AACS LA tested both TDMore Blu-ray Copy and TDMore Blu-ray Converter and found that both circumvent AACS Technology, ripping the underlying copy-protected and copyrighted motion picture content from the Blu-ray disc and allowing the user to copy, duplicate, play and share it widely over the internet in other file formats suited to that purpose.³⁷

As they did with DVDFab Software, Defendants market TDMore Software through numerous social media and networking platforms, including Facebook, Twitter and YouTube.³⁸ Defendants’ YouTube account contains videos showing use of TDMore Software to rip the copyrighted United States motion picture Battleship from Blu-ray disc.³⁹ Like DVDFab Software, TDMore Software has been extensively covered by the website Myce.com and the TDMore.com website carries a 5-star “MyCE editor rating.”⁴⁰

Defendants thus use multiple aliases to continue to market, offer for sale and sell software into the United States that circumvents AACS Technology (DVDFab, BluFab⁴¹ and TDMore) from multiple websites, including DVDFab.cn, FabImg.net, Blufab.cn and

³⁴ *Id.* ¶¶ 11, 17, 25-26, Exs. D-E, I-M.

³⁵ *Id.* ¶ 23, Ex. H.

³⁶ *Id.* ¶ 18, Ex. F.

³⁷ *Id.* ¶¶ 24, 28, Exs. K-L.

³⁸ *Id.* ¶ 30, Ex. N.

³⁹ *Id.*

⁴⁰ *Id.* Ex. H.

⁴¹ See AACS LA Amend Opp. at 9, 12; AACS LA Vacate Opp. at 10.

Blufab.com⁴² and promote the software through a number of social media⁴³ all in direct contravention of the Preliminary Injunction Order.⁴⁴

At the same time, Defendants have gone to great lengths to hide themselves, concealing their identities, relationships, and whereabouts as they conducted their illegal business and failing to provide information requested by this Court, including: (1) Feng Tao's identity or Defendants' business location in China, (2) the size of Defendants' business, (3) the number of employees, (4) the volume of its sales, (5) the percentage of Defendants' business devoted to different software programs, (6) Frank's identity, (7) why Frank called AACCS LA but no representative of Defendants' business contacted the Court, (8) how Frank's threat might be reconciled with Defendants' professed interest in only selling DVDFab Software outside of the United States, (9) the English proficiency of Defendants' employees, (10) Defendants' familiarity with the legal controversy surrounding their copy protection circumvention business, (11) the level of Feng Tao's business sophistication and (12) his access to sophisticated individuals within the company.⁴⁵

Defendants have thus set themselves up to continue to sell circumvention software violating AACCS LA's rights and doing irreparable harm to it under any name other than that of Feng Tao, the lone individual who has partially appeared before this court—though with the

⁴² *Id.*

⁴³ See the social media platforms and pages at the following URLs: <https://twitter.com/ilikedvdfab>, <https://facebook.com/ilikedvdfab>, <https://facebook.com/pages/DVDFab/401104376571433>, <https://plus.google.com/116839689416981316917>, <https://plus.google.com/11625637514013837299>, <https://twitter.com/dvdfabofficial>, <https://www.facebook.com/dvdfabber>, <https://twitter.com/BluFab><https://www.facebook.com/pages/BluFab/492370837541754>, <https://www.facebook.com/blufabsoftware>. Oct. 3 Hewlett Decl. ¶ 34, Ex. Q; AACCS LA's Memorandum of Law in Opp. to Defendant Feng Tao's Motion to Amend Injunction Pursuant to Rule 59(e), dated Apr. 21, 2014 [Doc. No. 35] ("AACCS LA Amend Opp."), at 10; AACCS LA's Memorandum of Law in Opp. to Defendant Feng Tao d/b/a DVDFab and Fengtao Software Inc.'s Motion to Vacate Entry of Default, dated July 11, 2014 [Doc. No. 53] ("AACCS LA Vacate Opp."), at 6.

⁴⁴ See AACCS LA Amend Opp. at 10-12; AACCS LA Vacate Opp. at 6, 10.

⁴⁵ AACCS LA Vacate Opp. at 1-4, 7-10.

reservation that he may not appear to defend the suit on its merits⁴⁶—while minimizing the possibility that AACS will detect these activities.

ARGUMENT

The Court Can and Should Modify the Preliminary Injunction Order

“An injunction is an ambulatory remedy that marches along according to the nature of the proceeding” and which “is executory and subject to adaptation as events may shape the need. . . .”⁴⁷ The Second Circuit has well established that “[t]he decision whether to modify a preliminary injunction involves an exercise of the same discretion that a court employs in an initial decision to grant or deny a preliminary injunction.”⁴⁸ The Court may modify an injunction “when, based on principles of equity, the modification is necessary to preserve the status quo.”⁴⁹

In granting AACS LA’s motion for preliminary injunction, the Court found AACS LA established probable success on the merits and irreparable harm.⁵⁰ With regard to probable success on the merits, the Court found that “AACS LA has made a clear showing it will likely succeed on its claims that DVDFab Group has violated and continues to violate each prong of Section 1201(a)(2) and Section 1201(b)(1) of the Digital Millennium Copyright Act,” including by showing that “[t]here is no doubt that DVDFab Group’s business purpose and/or the purpose of DVDFab software is to decrypt AACS’s encryption or that [] AACS’s encryption keys control access to copyright-protected content.”⁵¹ With regard to irreparable harm, the Court held and AACS LA showed that offer for sale and sale of the DVDFab Software irreparably harms AACS LA because, *inter alia*, (1) given the DVDFab Group’s long history of violation and evasion of enforcement, there was a likelihood of future violations; (2) proof of actual damages would be

⁴⁶ Declaration of Feng Tao, dated June 20, 2014 [Doc. No. 49], ¶ 35.

⁴⁷ *Sierra Club v. U.S. Army Corps of Engineers*, 732 F.2d 253, 256 (2d Cir. 1984).

⁴⁸ *Weight Watchers Int’l, Inc. v. Luigino’s, Inc.*, 423 F.3d 137, 141 (2d Cir. 2005).

⁴⁹ *Museum Boutique Intercontinental, Ltd. v. Picasso*, 880 F. Supp. 153, 161 (S.D.N.Y. 1995).

⁵⁰ PI Hearing Tr. 10:1-5, 20-23, 13:11-22

⁵¹ *Id.* at 10:1-5, 20-23.

difficult if not impossible to quantify, particularly given that the circumvention software enables the content on Blu-ray discs to be denuded of protection and distributed worldwide through the Internet, resulting in massive copyright infringement; and (3) the DVDFab Group's continuing copyright infringement incentivizes infringement by other parties.⁵² Defendants' subsequent actions have compounded and furthered these harms.

As is well-known to AACS LA, enterprises operating through violations of intellectual property laws, such as circumvention technology traffickers, trademark counterfeiters and copyright pirates, evade effective enforcement by registering multiple domains to associate with the websites by which they sell their goods and registering new domains whenever their prior domains are shut down.⁵³ Defendants have employed this very tactic to evade and frustrate effective enforcement of the Preliminary Injunction Order, and they have added pages to the playbook by creating multiple new social media and networking pages and profiles, purporting to operate a geographically limited non-U.S. business (including through the use of non-U.S. domain names) while continuing to target United States customers. Defendants' most recent and flagrant actions have been to continue to sell DVDFab Software into the United States, to promote the Wookao Add-on to restore the AACS-circumvention feature they had purportedly removed from the United States version of that software, and to stealthily repackage the same underlying DVDFab Software as TDMore Software. Each of these actions violates the Preliminary Injunction Order and continues and expands into new channels Defendants' trafficking in circumvention software that this Court has found AACS LA is likely to show violates Section 1201(a)(2) and Section 1201(b)(1) of the Digital Millennium Copyright Act and the cause of irreparable harm to AACS LA.

⁵² PI Hearing Tr. 13:11-22; PI Brief at 20-21.

⁵³ Apr. 21 Hewlett Decl. ¶ 5.

Even were Woookao a third party tool as suggested by Defendants, Defendants blatant marketing of Woookao as an add-on to DVDFab Software for the purpose of circumventing AACCS Technology would be in violation of this Court's Preliminary Injunction Order. The evidence indicates, however, that Woookao is software distributed by Defendants.

Defendants' actions continue to cause AACCS LA irreparable harm. Defendants' attempts to evade and thwart the Preliminary Injunction Order are deviations from the status quo sought to be preserved by that Order, and they justify modification of the Preliminary Injunction Order to adapt to the present need.

Courts in this District have under similar circumstances amended their orders to account for a defendant's continued violations, including directing non-parties who directly or indirectly provide services to a defendant's infringing Internet activities to cease providing such services.⁵⁴ This Court should amend the Preliminary Injunction Order to explicitly bar Defendants from offering for sale and selling the TDMore Software and BluFab Software into the United States, operating the domain names Woookao.com, Woookao.cn., Boooya.org, Boooya.com, TDMore.com, TDMore.cn, DVDFab.cn, BluFab.com, BluFab.cn and FabImg.net and any associated websites and new social media and networking pages and profiles, and provide for related third-party relief as set out in the Proposed Amended Preliminary Injunction Order and reflected in the comparison document submitted herewith.

⁵⁴ See *Oral-B Laboratories, Inc. v. Mi-Lor Corp.*, 810 F.2d 20, 24-25 (2d Cir. 1987) (affirming modification of preliminary injunction to broaden bar on use of infringing elements in packaging after defendant violated a preliminary injunction and a subsequent clarifying order); Order [Doc. No. 183], *Klipsch Group, Inc. v. Big Box Store Limited*, No. 12-cv-6283, at 6-7 (S.D.N.Y. Jan. 16, 2014) (remediating violations of preliminary injunction order, including sales of counterfeit goods on new websites, by, *inter alia*, ordering that defendants cease operating certain domain names and that third-party service providers including domain name registries and registrars disable those domains and related websites); *A.V. by Versace, Inc. v. Gianni Versace, S.p.A.*, No. 96 CIV. 9271, 2002 WL 2012618, at *11 (S.D.N.Y. Sept. 3, 2002) (ordering as remedy for violation of preliminary injunction that defendant "take all reasonable steps to" remove infringing content from Internet and that the preliminary injunction be modified to additionally bar commercial use of the name "Versace"); *A&M Records Inc. v. Napster, Inc.*, 284 F.3d 1091, 1099 (9th Cir. 2002) (affirming order that Napster disable its file transfer service due to noncompliance with existing modified preliminary injunction).

CONCLUSION

Based upon the foregoing, Plaintiff AACS LA respectfully requests that this Court issue an order amending the Preliminary Injunction Order.

Dated: New York, New York
October 3, 2014

Respectfully submitted,

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